

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Burlington Northern and Santa Fe Railway Company,
Petitioner,

vs.

Westfield Township, Bureau County, Illinois; Bureau County,
Illinois and, State of Illinois, Department of Transportation,
Respondents.

T04-0008

Petition seeking an order from the Illinois Commerce
Commission authorizing the permanent closure and removal of
the at grade crossing located at the intersection of the tracks of
The Burlington Northern and Santa Fe Railway Company and
Westfield Township Road 3350E (TR 390), Milepost 89.02, DOT
No. 079 655L; the construction of a connecting road located
south of and parallel to The Burlington Northern and Santa Fe
Railway Company's tracks which would serve to connect
Westfield Township Road 3350E (TR 390) and Westfield
Township Road 2400N (TR 296); with the cost of such project to
be borne by the parties in accordance with law and that a
substantial portion of the cost be borne by the Grade Crossing
Protection Fund.

ORDER

By the Commission:

On January 26, 2004, The Burlington Northern and Santa Fe Railway Company ("Railroad") filed with the Illinois Commerce Commission ("Commission") a verified petition in the above captioned matter naming as respondents Westfield Township in Bureau County ("County"), Illinois ("Township") and State of Illinois, Department of Transportation ("Department") seeking an Order from the Commission authorizing the permanent closure and removal of the Westfield Township Road 3350E (TR-390) grade crossing of The Burlington Northern and Santa Fe Railway Company's tracks (**AAR/DOT 079 655L, Milepost 89.02**) and the construction of a connecting road, located south of and parallel to the Railroad's tracks, which would serve to connect Westfield Township Road 3350E (TR-390) and Westfield Township Road 2400N (TR-296) [**AAR/DOT 079654E, Milepost 88.92**]. The Railroad's petition proposes that the parties in accordance with law pay the cost of the safety improvements and that the Grade Crossing Protection Fund pay a substantial portion of the cost.

On March 25, 2004, a hearing was held before a duly authorized Administrative Law Judge at the Commission's Springfield Office. An appearance was entered by representatives of the Railroad, the Department and a member of the Commission's Railroad Section ("Staff"). The Bureau County Engineer was present and indicated he had no objection to the petition as filed.

The Railroad offered evidence and testimony in support of the petition filed herein. The Railroad stated it operates double main tracks through Bureau County, generally in a northeast to southwest direction. Train operations consist of six (6) Amtrak trains at a max timetable speed of 79mph and thirty (30) freight trains at a max timetable speed of 60 mph during a twenty-four (24) hour time frame. These trains run during daylight and dark hours. Westfield Township Road 3350E (TR-390) is a north/south roadway intersecting the Railroad at an approximate 55° angle and carries approximately 25 vehicles per day. The crossing is equipped with reflectorized crossbuck warning signs. Westfield Township Road 2400N (TR-296) is an east/west roadway intersecting the Railroad at an approximate 55° angle and carries approximately fifty (50) vehicles per day. The crossing is equipped with automatic flashing light signals and gates. The roadway is an all weather road and sufficient to handle the increased traffic.

The Railroad therefore requests that the Commission enter an Order closing and abolishing Westfield Township Road 3350E (TR-390) and construction of a connecting road, located south of and parallel to The Burlington Northern and Santa Fe Railway Company's tracks, which would serve to connect Westfield Township Road 3350E (TR-390) and Westfield Township Road 2400N (TR-296). The Railroad indicated it had purchased the required right-of way in the Township's name at a cost of \$22,596. The estimated cost of constructing the connecting road is estimated at \$97,000, for a total project cost of \$119,596. The Railroad also requested that the Grade Crossing Protection Fund pay 80% of the cost to construct the connecting road. No barricades would be required since the roadway would be removed on both sides of the closed roadway. The Railroad further indicated it would remove the crossing surface and warning signs at its cost.

The County indicated it will be the lead agency for the project and requests the Commission allow eighteen (18) months time to complete the project.

Staff recommended the petition filed herein by the Railroad, be approved by the Commission.

As required by Law, public notice of the hearing on the subject case was published in The Mendota Reporter, a newspaper of general circulation, on February 11, 2004.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction of the parties hereto and the subject matter herein.
- 2) The recitals of fact set forth in the prefatory portion of this Order are supported by evidence of record and are adopted as findings of fact.
- 3) Public safety requires that the work proposed in the petition and set forth in the prefatory portion of this Order be completed as outlined in Petitioner's Exhibit 5 (plan) and Exhibit 6 (estimated cost), which were admitted into evidence.
- 4) Public convenience and necessity do not require the continued existence of Westfield Township Road 3350E (TR-390) crossing and said crossing should be closed, abolished and the existing crossing surface and cross buck signs should be removed.
- 5) In the interest of public safety and convenience, a connecting road should be built between Westfield Township Road 3350E (TR-390) and Westfield Township Road 2400N (TR-296).
- 6) It is fair and reasonable that the costs for the improvements set forth herein should be divided between the Railroad and the Grade Crossing Protection Fund of the Motor Fuel Tax Law as follows:
 - a) The cost to construct the connecting road is estimated at \$119,596. The Grade Crossing Protection Fund should pay 80% of the construction costs, not to exceed \$95,677. The Railroad should pay all remaining construction costs. The Township should pay all future maintenance costs.
 - b) The Company should pay all costs to close, abolish and the removed the existing crossing surface and cross buck signs.
- 7) The County has agreed to be the lead agency for the connecting roadway construction. The County will be responsible for the roadway work, provide construction supervision and prepare all billing on the project.
- 8) The County and Railroad shall each file a written report with the Director of Processing within fifteen (15) days of the conclusion of each calendar quarter, stating the status of expenditures of their portions of the project and their percentage of completion of the project. If the project is behind schedule the report must include a brief explanation of the reason(s) for the delay.
- 9) All bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Main Office, Illinois Department of Transportation at 2300 South Dirksen Parkway, Room 205, Springfield, Illinois, 62764. A copy of each bill for Fund reimbursement should also be submitted to the Director of

Processing and Information, Transportation Division of the Commission. The final bill for expenditures from each party shall be clearly marked "Final Bill". All bills shall be submitted to the Department and Commission no later than twenty-four (24) months from the date of this Commission Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in the Order. The Department shall, at the end of the 24th month from the Commission's Order date, de-obligate all residual funds accountable for installation costs for this project.

- 10) The County and Railroad shall each within ninety (90) days of the date of this Commission Order; submit to the Director of Processing, Transportation Division of the Commission, the name, title, mailing address, phone number and facsimile number of a project manager.
- 11) Since the County and/or its contractor will perform the connecting roadway construction, roadway contractor and railroad liability insurance will be required as specified in Department's "Standards and Specifications for Road and Bridge Construction".
- 12) The County and Railroad shall have bi-monthly coordination meetings, unless agreed to by each of them that any meeting is not necessary, until the completion of the projects.
- 13) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or Order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects the parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises the parties that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED that the Burlington Northern and Santa Fe Railway Company be and it is hereby required and directed to close, abolish and remove the crossing surface and crossbucks at the Westfield Township Road 3350E (TR-390) grade crossing.

IT IS FURTHER ORDERED that Bureau County be, and it is hereby required and directed to construct a connecting road between Westfield Township Road 3350E (TR-390) and Westfield Township Road 2400N (TR-296) all on the east side of the Railroad's mainline tracks and right of way.

IT IS FURTHER ORDERED that Westfield Township be, and it is hereby required and directed to maintain the new roadway that will be constructed to connect Westfield Township Road 3350E (TR-390) and Westfield Township Road 2400N (TR-296).

IT IS FURTHER ORDERED that Bureau County and the Burlington Northern and Santa Fe Railway Company be, and they are each hereby, required and directed to proceed immediately in performing its work as set forth in the prefatory portion of this Order, and shall complete its work within eighteen months (18) from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Finding (6), hereinabove.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of a detailed cost estimate and general layout plan, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the application herein required to be filed in accordance with Form 3 of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Main Office, Illinois Department of Transportation at 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Department shall submit a copy of each bill to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures shall be clearly marked "Final Bill". All bills shall be submitted to the Department no later than thirty (30) months from the date of this Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in this Order. The Department shall, at the end of the 30th month from this Order date, de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that Bureau County and the Burlington Northern and Santa Fe Railway Company shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress each has made toward completion of the work herein required. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), type of improvement, and project manager information (the name, title, mailing address, phone number and facsimile of the County and/or Railroad employee responsible for management of the project.)

IT IS FURTHER ORDERED that Bureau County and the Burlington Northern and Santa Fe Railway Company shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the status of expenditures of the total project and percentage of completion of the project. If the

project is behind schedule the report(s) must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that requests for Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered time.

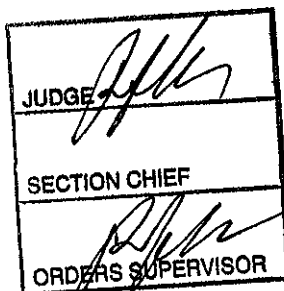
IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Order and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required, a National Inventory Update Report Form as a notice of said completion.

IT IS FURTHER ORDERED that Bureau County shall submit a written notice, to the Director of Processing, Transportation Bureau of the Commission, of the date the work herein required of it has been completed; said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 21st day of April, 2004.



Edward C. Hueley 2

Chairman